

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2343

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), Canciamilla, Cogdill, Parra, Salinas, and
Vargas)**

February 23, 2006

An act to amend Sections 62521, 62560, 62561, 62563, 62564, 62574 of the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as amended, Committee on Agriculture. Milk producers' security trust fund.

Existing law ~~confers~~ *confers* upon the Secretary of Food and Agriculture the ability to establish and administer the Milk Producers Security Trust Fund to protect producers against loss of payment for bulk milk. Existing law provides that security charges may be collected by the secretary until he or she determines that the value of the fund approximates 110 percent of the dollar amount of the total purchases of milk being paid for and received in one month by the handler with the largest payment obligation to producers for that month.

This bill would instead provide that *security charges shall only be collected until January 1, 2007, and that the fund cash shall be maintained at a value equal to the fund balance as of January 1, 2007, at which time the secretary shall discontinue collecting security charges unless \$30,000,000. If the fund balance cash falls below \$30,000,000, as specified the secretary may resume collecting security charges in order that the fund cash is maintained at that level.* This

bill would also provide that *if in any month 110% of a the secretary may require handler's whose average monthly milk purchases exceed \$30,000,000 the secretary shall require that handler to provide acceptable securities, as defined.* This bill would provide that when acceptable securities in the required amount, as specified, are provided, the secretary shall not collect security charges from that handler. This bill would provide that shipments to handlers who fail to provide acceptable securities will be listed as ineligible for coverage under the fund.

Existing law specifies the amount of security charges in mills per pound of product each handler is obligated to pay into the Milk Products Security Trust Fund.

This bill would decrease the mills per pound paid by handlers, as specified.

Existing law provides that any handler subject to any milk pooling plan, as specified, that receives milk that is not subject to the calculation of producer prices, as specified, shall be obligated to pay the security charges for any portion of that milk that is assigned to class 1, class 2, and class-2 3 usage.

This bill would change these provisions to also include milk that is assigned to class 4a and class 4b usage.

Existing law provides that any handler receiving milk that is not subject to any pooling plan, as specified, shall be obligated to remit security charges for class 1, class 2, and class 3 products, and may deduct the security charges from the minimum prices to be paid to producers.

This bill would change these provisions to also include class 4a and 4b products.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 62521 of the Food and Agricultural
- 2 Code is amended to read:
- 3 62521. For purposes of this chapter, the following terms
- 4 mean:
- 5 (a) "Acceptable security" means a surety bond from an
- 6 admitted surety insurer, deposits of government securities, a cash
- 7 deposit, a letter of credit, escrow account, or other form of

1 performance guarantee acceptable to the secretary and meeting
2 the requirements as acceptable security pursuant to law. Letters
3 of credit used as acceptable security shall contain provisions as
4 the secretary may prescribe, shall name the secretary as the
5 beneficiary of the letter of credit, shall be clean and irrevocable,
6 and shall provide that the secretary may draw upon it up to the
7 total amount in the event of a handler payment default. *Any*
8 *instrument offered by a handler as acceptable security shall be*
9 *effective and enforceable by the secretary for a term of not less*
10 *than 12 months.*

11 (b) "Board" means the Milk Producers Security Trust Fund
12 Board.

13 (c) "Covered milk" means milk that would, in the event of a
14 default in payment by the purchasing handler, qualify for
15 coverage under Article 5 (commencing with Section 62580) of
16 Chapter 2.5 of Part 3.

17 (d) "Fund" means the Milk Producers Security Trust Fund
18 created pursuant to Section 62506.

19 ~~(e) "Fund balance" means the combined value of the security~~
20 ~~charges, any increments received pursuant to Section 62573, and~~
21 ~~the value of all alternative financial instruments then being used~~
22 ~~by the secretary pursuant to subdivision (d) of Section 62560.~~

23 ~~(f) "Fund surplus" means the amount by which the fund~~
24 ~~balance exceeds, at any particular time, the fund balance as of~~
25 ~~January 1, 2007.~~

26 (e) "*Fund cash*" means the combined value of the security
27 charges collected pursuant to Section 62561 and any increments
28 received pursuant to Section 62573.

29 (f) (1) *Except as provided in paragraph (2), "fund surplus"*
30 *means the portion of fund cash at any particular time that*
31 *consists of increments received by the fund pursuant to Section*
32 *62573.*

33 (2) *If payment of producer claims pursuant to Article 7*
34 *(commencing with Section 62620) reduces the fund cash to thirty*
35 *million dollars (\$30,000,000), "fund surplus" shall thereafter*
36 *mean the amount by which the fund cash exceeds thirty million*
37 *dollars (\$30,000,000).*

38 (g) "Handler" means any person who as owner, agent, broker,
39 or intermediary, either directly or indirectly, receives, purchases,
40 or otherwise acquires ownership, possession, or control of milk

1 in unprocessed or bulk form from a producer or a
2 producer-handler for the purpose of manufacturing, processing,
3 selling, or other handling. It includes cooperative associations
4 that, either directly or indirectly, receive, purchase, or otherwise
5 acquire ownership, possession, or control of milk from other
6 handlers or producers who are nonmembers of the cooperative.

7 (h) “Milk” means bulk whole milk, bulk lowfat milk, bulk
8 skim milk, bulk condensed skim, and bulk cream, and any other
9 combination of these products which have not had nondairy
10 ingredients added. It does not include milk which has been
11 packaged in bottles, cartons, dispenser cans, or other consumer
12 packages.

13 (i) “Producer” means any person that produces milk from five
14 or more cows whose bulk milk is received, acquired, or handled
15 by a handler. It includes the nonprofit cooperative associations
16 described in Article 3 (commencing with Section 61871) of
17 Chapter 2 in the sale of milk of its member producers to other
18 handlers.

19 SEC. 2. Section 62560 of the Food and Agricultural Code is
20 amended to read:

21 62560. (a) The security charges provided for in Section
22 62561 shall be collected until January 1, 2007. Unless otherwise
23 permitted by this section, the secretary shall thereafter
24 discontinue collection of the security charges. The fund shall
25 consist of *the* security charges *collected*, the value of any
26 alternative financial instrument, and acceptable securities
27 provided by handlers pursuant to subdivision ~~(d)~~ (c).

28 (b) If, after January 1, 2007, payment of ~~producers~~ *producer*
29 claims ~~reduce~~ *reduces* the fund ~~balance~~ *cash* below thirty million
30 dollars (\$30,000,000), the secretary may resume collecting
31 security charges in order that the fund ~~balance~~ *cash* is thereafter
32 maintained at thirty million dollars (\$30,000,000). Security
33 charges necessary to return the fund ~~balance~~ *cash* to thirty
34 million dollars (\$30,000,000) shall, subject to subdivision (c), be
35 collected from all handlers making purchases of milk, including
36 handlers who have posted acceptable securities ~~as a result of their~~
37 ~~milk purchases in excess of thirty million dollars (\$30,000,000).~~
38 *pursuant to subdivision (c).*

39 (c) If, in any month, *110 percent of* any handler’s average
40 monthly milk purchases, computed over the preceding 12

1 months, exceeds ~~thirty million dollars (\$30,000,000)~~ *the fund*
2 *cash as of the end of that month*, the secretary shall require ~~the~~
3 *that* handler to provide acceptable securities in an amount equal
4 to the difference between ~~thirty million dollars (\$30,000,000)~~ *the*
5 *fund cash* and 110 percent of that handler's average monthly
6 milk purchases. When handlers have provided acceptable
7 securities covering the difference, the secretary shall not collect
8 security charges from those handlers for the portion of their
9 average monthly milk purchases covered by acceptable
10 securities. ~~Securities Shipments~~ to handlers failing to provide
11 acceptable securities, as required by this subdivision, shall be
12 listed by the secretary as ineligible for coverage under the fund
13 pursuant to Section 62586.

14 (d) In consultation with the Milk Producers Security Trust
15 Fund Advisory Board, the secretary may consider and use
16 alternative financial instruments, in addition to, or in lieu of,
17 using security charges to meet the financial security requirements
18 of this section.

19 SEC. 3. Section 62561 of the Food and Agricultural Code is
20 amended to read:

21 62561. (a) The following security charges shall be in effect
22 for any period for which the secretary has implemented
23 collections under this chapter:

24 (1) (A) One and seven-tenths mills per pound (\$0.0017) for
25 class 1 fat.

26 (B) Nine-tenths mills per pound (\$0.0009) for class 1 ~~solid~~
27 *solids-not-fat*.

28 (C) One-tenth mill per pound (\$0.0001) for class 1 fluid.

29 (2) (A) Three and two-tenths mills per pound (\$0.0032) for
30 classes 2, 3, 4a, and 4b fat.

31 (B) One and three-tenths mills per pound (\$0.0013) for classes
32 2, 3, 4a, and 4b solids-not-fat.

33 (b) The secretary shall add the security charges to the prices
34 established for all classes of milk in accordance with Chapter 2
35 (commencing with Section 61801). The secretary is only
36 authorized by this article to collect security charges on covered
37 milk.

38 SEC. 4. Section 62563 of the Food and Agricultural Code is
39 amended to read:

1 62563. Any handler subject to any pooling plan in effect
2 under Chapter 3 (commencing with Section 62700) shall
3 continue to be obligated for the minimum prices provided for in
4 the stabilization and marketing plans on the pooled usage of the
5 handler. However, any part of the minimum prices that is
6 attributable to the security charges established pursuant to
7 Section 62561 shall be deducted before producer prices are
8 determined under the pooling plan.

9 Any handler subject to the pooling plan that receives milk that
10 is not included in the calculation of producer prices determined
11 under the pooling plan shall be obligated to pay the security
12 charges established pursuant to Section 62561 for any portion of
13 that milk that is assigned to class 1, class 2, class 3, class 4a, and
14 class 4b usage.

15 The amount of any handler's obligation attributable to the
16 security charges established pursuant to Section 62561 shall be
17 remitted by the secretary to the fund by the end of the month
18 following the month the pool calculations were completed.

19 SEC. 5. Section 62564 of the Food and Agricultural Code is
20 amended to read:

21 62564. Any handler receiving milk not subject to any pooling
22 plan in effect pursuant to Chapter 3 (commencing with Section
23 62700) shall be obligated to remit to the secretary any security
24 charges in effect pursuant to Section 62561 for class 1, class 2,
25 class 3, class 4a, and class 4b products produced from the milk
26 and may deduct the security charges from the minimum prices
27 required to be paid to producers.

28 SEC. 6. Section 62574 of the Food and Agricultural Code is
29 amended to read:

30 62574. Immediately following the semiannual payment to the
31 fund of the increment provided in Section 62573, if the secretary
32 determines that there is a fund surplus, the secretary shall transfer
33 an amount equal to the fund surplus to an account administered
34 by the ~~Milk Stabilization~~ *Dairy Marketing* Branch of the
35 department to be used to reduce the producer and handler
36 assessments that would otherwise be imposed pursuant to Article
37 14 (commencing with Section 62211) of Chapter 2. One-half of
38 the fund surplus so transferred shall be used to reduce the
39 obligation of producers and one-half shall be used to reduce the
40 obligation of handlers pursuant to that article. ~~If, at any time, the~~

1 ~~secretary determines that the fund balance has fallen below the~~
2 ~~level that existed as of January 1, 2007 or that a transfer pursuant~~
3 ~~to this section would cause the fund balance to fall below the~~
4 ~~level that existed as of January 1, 2007, the secretary shall cease~~
5 ~~to make any transfer pursuant to this section until the time that a~~
6 ~~fund surplus exists.~~

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